

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

ALAN H. SMITH,

Plaintiff,

v.

CIV No. 13-435 MCA/GBW

ALLEN BATTS, *et al.*

Defendants.

**ORDER ADOPTING MAGISTRATE JUDGE'S PROPOSED FINDINGS AND
RECOMMENDED DISPOSITION**

Plaintiff filed his complaint against Defendants pursuant to 42 U.S.C. § 1983 on May 8, 2013. *Doc. 1*. His claims concern his status as a lessee of Black Mountain Ranch, located in Luna County, New Mexico. *Doc. 99* ¶ 14. In May 2013, Plaintiff locked a gate that he had installed on Black Mountain Ranch, thereby blocking the road that Defendant Treadwell used to access his property. *Id.* at ¶ 14-17, 20, 22. Defendant Treadwell called a deputy with the Luna County Sheriff's Department to advise him of the situation, and deputy sheriffs proceeded out to the scene. *Id.* at ¶ 23. At the end of the encounter, Plaintiff was arrested for assault with a deadly weapon and assault on a peace officer. *Id.* Plaintiff now alleges that Defendants, including Defendant Treadwell, violated his rights by unconstitutionally taking his property and unconstitutionally arresting him. On August 6, 2014, Defendant Treadwell filed a motion to dismiss for

failure to state a claim. *Doc. 102*. Plaintiff responded on August 19, 2014 (*doc. 104*), and briefing was complete on September 2, 2014 (*doc. 106*).

On September 15, 2014, the Magistrate Judge filed his Proposed Findings and Recommended Disposition (PFRD), recommending that the Court grant Defendant Russell Treadwell's Motion to Dismiss because the alleged facts do not support a finding that Defendant Treadwell acted under color of state law, as required to state a plausible claim pursuant to 42 U.S.C. § 1983. *Doc. 107*. On October 15, 2014, the Court granted in part Plaintiff's motion for an extension of time, giving him until October 29, 2014, to file objections to the PFRD. *Doc. 109*. Plaintiff has filed no objections, and, upon review of the record, I concur with the Magistrate Judge's findings and recommendations.

Wherefore, IT IS HEREBY ORDERED that the Magistrate Judge's Proposed Findings and Recommended Disposition, *doc. 107*, is ADOPTED. Plaintiff's claims against Defendant Russell Treadwell are hereby DISMISSED with prejudice.

A handwritten signature in black ink, appearing to read "D. Pittman", is written over a horizontal line.

UNITED STATES DISTRICT JUDGE